

BAIL SLIP

The Appellants herein namely 1. Mohanasundaram 2. Alamelu in Crl.A.No.1010/2002 (Accused in SC NO. 405/2000 dated 26.06.2002 on the file of the Additional Sessions Judge (FTC III) Chengalpattu District) were directed to be released on bail as per order of this Court dated 29.07.2002 and made in Crl. MP 6377/2002.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2006

CORAM

THE HONOURABLE MR. JUSTICE M.KARPAGAVINAYAGAM
and
THE HONOURABLE MR. JUSTICE AR.RAMALINGAM

Crl.Appeal No.1010 of 2002

1. Mohanasundaram
2. Alamelu Appellants/Accused

Vs.

The Inspector of Police,
F.2 Avadi Tank Factory Police
Station, Avadi. Respondent/Complainant

Appeal against the judgment dated 26.06.2002 made in S.C.No.405 of 2000 on the file of Additional Sessions Judge (Fast Track Court No.III), Chengleput District at Poonamallee.

For appellants : Mr. A.Thiyagarajan
For respondent : Mr. E.Raja, Additional Public
Prosecutor.

J U D G M E N T

(Judgment of the Court was delivered by M.KARPAGAVINAYAGAM,
J)

Appellants are accused in S.C.No.405 of 2000 on the file of Additional Sessions Judge, (Fast Track Court No.3), Chengleput. By the Judgment dated 26.06.2002, the learned Additional Sessions Judge has convicted the Appellants / A.1 and A.2 under Section 302 r/w 34 I.P.C.

and sentenced them to undergo life imprisonment. Challenging the said conviction and sentence, this appeal has been filed.

2. The case of the prosecution, in brief, is as follows:-

(a) Appellants / A.1-Mohanasundaram and A.2-Alamelu are husband and wife. The deceased Devi is the wife of P.W.2 - Paramasivam. P.W.1 - James is the son of the deceased Devi and P.W.2. The house of P.W.2 and the deceased is situated at the Northern side of the house of the accused.

(b) There is a long pending dispute between the two families with reference to a pathway. With regard to the same, complaint and counter complaint were given by both the deceased and accused to the Police. P.W.12 - Singaraja, Sub Inspector of Police received the complaints and compromised the matter and asked both the accused and the deceased to settle the matter among themselves with the help of Panchayatdars. There was a Panchayat on 08.07.1999. D.W.1 - Mohan is one of the Panchayatdars. After the Panchayat, both of them came back home.

(c) However, next day, i.e. on 09.07.1999, again quarrel started. Both the accused picked up quarrel with the deceased and abused her. The deceased also abused them. In retaliation, both the accused attempted to beat her. On getting frightened, the deceased rushed towards her house. However, both the accused followed her and trespassed into her house. A.2 - Alamelu, wife of A.1 - Mohanasundaram took the kerosene can and poured kerosene over the deceased and A.1 lighted a match stick and threw it on her, as a result of which, the deceased was engulfed in fire. She ran out of the house. Then, neighbours P.W.3 - Murugammal and P.W.4 - Kumar and other neighbours put out the fire and immediately, she was taken to hospital. In the meantime, both the accused ran away from the scene of occurrence.

(d) The deceased was brought to Kilpauk Government Hospital by one Pattammal. P.W.14 - Dr.Usha admitted the deceased and issued Ex.P.17 - Accident Register at about 8.50 a.m. Intimation had been sent to the police.

(e) P.W.13 - Appaswamy, Inspector of Police came

to the hospital and recorded the statement - Ex.P.10 from the deceased. On the basis of the statement, a case was registered in Avadi Tank Factory Police Station Crime No.243 of 1999 for the offence under Section 307 I.P.C.

(f) P.W.13 took up further investigation. He went to the scene of occurrence and recovered burnt materials. He prepared rough sketch - Ex.P.12 and observation mahazar - Ex.P.13.

(g) The injured Devi died next day, i.e., on 10.07.1999 at 9.30 a.m. On receipt of the death intimation, P.W.13 altered the offence into one under Section 302 I.P.C. He went to the hospital and conducted inquest and examined the witnesses. Then, the body was sent for post-mortem.

(h) The Doctor attached to Kilpauk Government Hospital, conducted post-mortem and issued post-mortem certificate - Ex.P.19.

(i) In the meantime, P.W.13 arrested A.1 and A.2 and on the confession of A.1, kerosene can was recovered. Material objects were sent for chemical examination.

(j) After receipt of the chemical Examiner's report and completion of the investigation, charge sheet was filed by P.W.15 - Inspector of Police for the offences under Sections 307 and 302 I.P.C.

3. During the course of trial, on the side of prosecution, P.Ws.1 to 16 were examined; Exs.P.1 to P.22 were filed and M.Os.1 to 4 were marked.

4. When the accused were questioned under Section 313 Cr.P.C., both the accused simply denied their complicity in the crime. On behalf of defence, one Mohan was examined as D.W.1.

5. The trial Court, after considering the evidence available on record, convicted the accused for the offence punishable under Section 302 r/w 34 I.P.C. and sentenced them as stated above. Hence, this appeal.

6. Mr.A.Thiyagarajan, learned counsel appearing for the appellants / A.1 and A.2 took us through the entire evidence and pointed out various discrepancies found in the materials available on record and contended that the accused are liable to be acquitted.

7. We have heard Mr. E.Raja, learned Additional Public Prosecutor.

8. We have carefully considered the submissions made by both the counsel and gone through the materials on record.

9. According to prosecution, there used to be frequent quarrels between the deceased family and accused family, resulting in complaint and counter complaint by one against the other in the police station and ultimately, that matter ended in compromise. However, on the date of occurrence, i.e. on 09.07.1999 at 7.00 a.m., both the accused picked up quarrel with the deceased and began to beat her in front of her house. The deceased on getting frightened that she would be beaten, came running towards her house. Both the accused followed her and entered into her house and A.2 - Alamelu took the kerosene can, which was available in the house of the deceased and poured kerosene over her body. A.1 - Mohanasundaram took a match stick and lighted the same and threw it on the deceased. The deceased caught fire and came out running to the road. All the other witnesses gathered there and put out the fire and took her to hospital. The deceased was admitted in the hospital and ultimately, she died the next day, i.e., on 10.07.1990.

10. The prosecution relies upon two sets of evidence; (i) the oral dying declaration given by the deceased to P.W.3 - Murugammal and P.W.4 - Kumar and (ii) the dying declaration given by the deceased to Doctor P.W.14 and Ex.P.17 - Accident Register and the dying declaration Ex.P.10 - given to P.W.13 - Inspector of Police at about 11.45 a.m. and Ex.P.22 - dying declaration given to P.W.16 - Judicial Magistrate at about 7.00 p.m.

11. As far as the first set of evidence relating to oral dying declaration is concerned, P.Ws.3 and 4, who are examined to speak about the oral dying declaration, have unfortunately turned hostile. Therefore, the evidence relating to the oral dying declaration proposed to be relied upon by the prosecution is not available to prove its case. On the other hand, P.Ws.3 and 4 would state that such a statement was not made by the deceased to them and they did not give any such statement to the police with reference to the oral dying declaration.

12. Yet another peculiar feature that we notice

is that both P.W.1 - James, son of the deceased and P.W.2 - Paramasivam, husband of the deceased would not support the case of the prosecution. On the other hand, P.W.1, who is none else than the son of the deceased, would state in his chief examination that the deceased herself poured kerosene and set fire.

13. Let us now come to the other set of evidence dealing with the dying declarations given by the deceased to the various authorities. The first dying declaration was made by the deceased to P.W.14 - Dr. Usha. In Ex.P.17 - the accident register issued by P.W.14, it is clearly stated that "alleged to have sustained burn when two known persons poured kerosene over her and fired her at above address around 7.00 A.M." As per Ex.P.17, two persons poured kerosene on her and set her on fire. But, these details would not give identity of the persons. However, the fact remains, according to the deceased, that two persons poured kerosene over her body. The said document - Ex.P.17 would indicate that one Pattammal took the deceased to hospital and admitted her. So, this document would indicate that when such a statement was made by the deceased to the Doctor, the said Pattammal was present. Unfortunately, the said Pattammal had not been examined. If the said Pattammal had been examined, then naturally, the prosecution would be able to elicit as to what was the actual words uttered by the deceased to the Doctor and what she said to Pattammal about the occurrence. Therefore, we cannot rely upon Ex.P.17 - Accident Register to hold that the accused alone poured kerosene over the body of the deceased and set her on fire.

14. The other dying declarations are Ex.P.10 and Ex.P.22. Ex.P.10 was recorded by P.W.13 - Investigating Officer from the deceased in the presence of the Doctor at about 11.45 a.m. The second dying declaration - Ex.P.22 was recorded by P.W.16 - Judicial Magistrate at 7.00 p.m. on the same day. As such, there are two dying declarations.

15. It is settled law that the conviction can be based on the dying declaration alone, provided it inspires confidence and as a matter of fact, further corroboration is not required. But, when there are two dying declarations, it has to be seen whether the contents of the dying declarations are consistent and the same can be accepted. When there are some discrepancies, the Court can look into corroboration and on the basis of the materials relating to corroboration, the dying declarations can be

accepted. Before looking into the contents of the dying declarations Ex.P.10 and Ex.P.22, let us now refer to the various observations made by this Court as well as the Supreme Court giving the guidelines for appreciation of evidence over the dying declarations, when there are more than one.

16. In *Kamala Vs. State of Punjab* (1993 SCC Criminal 1), the Supreme Court would state as follows:-

"If a dying declaration is found to be voluntary, reliable and made in fit mental condition, it can be relied upon without any corroboration. The statement should be consistent throughout if the deceased had several opportunities of making such dying declarations, that is to say, if there are more than one dying declaration they should be consistent. However if some inconsistencies are noticed between one dying declaration and the other, the Court has to examine the nature of the inconsistencies namely whether they are material or not. In scrutinising the contents of various dying declarations, in such a situation, the Court has to examine the same in the light of the various surrounding facts and circumstances."

17. In *Basith & 2 others Vs. State, etc.* (1997-2 L.W.(Crl.) 465), the Division Bench of this Court would make the following observations:-

"The reliability of such statement/declaration should be subjected to a close scrutiny, considering that it was made in the absence of the accused/appellant who has no opportunity to test its veracity by cross examination."

18. In *Jai Karan Vs. State of (N.C.T. Delhi)* (2000-1 L.W. (Crl.) 192), referring to various decisions, the Supreme Court has held as follows:

"Once the Court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence."

19. In *Nallam Veera Satyanandam v. The Public*

Prosecutor, High Court of A.P., (2004 (2) Crime 279 (SC)), the Supreme Court has held thus:

" It is the duty of the Court to consider each in its correct perspective and satisfy itself which one of them reflects the true state of affairs."

20. In Lella Srinivasa Rao Vs. State of Andhra Pradesh (2005-1 L.W. (Crl.) 212), the Supreme Court has held as follows:

"Having noticed the evidence on record and having noticed the inconsistency between the two dying declarations, we do not find it safe to base the conviction of the appellant on the basis of the second dying declaration."

21. In State of Punjab Vs. Parveen Kumar (2006) 1 (Supreme Court Cases (Cri) 146), the Supreme Court has observed thus:

"While appreciating the credibility of the evidence produced before the Court, the Court must view the evidence as a whole and come to a conclusion as to its genuineness and truthfulness. The mere fact that two different versions are given but one name is common in both of them cannot be a ground for convicting the named person. It may be that if there was any other reliable evidence on record, this Court could have considered such corroborative evidence to test the truthfulness of the dying declarations. The two dying declarations, however, in the instant case stand by themselves and there is no other reliable evidence on record by reference to which their truthfulness can be tested. It is well settled that one piece of unreliable evidence cannot be used to corroborate another piece of unreliable evidence."

22. In the light of the above principles laid down by this Court as well as the Supreme Court, let us now discuss the credibility of the two dying declarations recorded by P.W.13 - Inspector of Police and P.W.16 - Judicial Magistrate.

23. The first dying declaration was recorded by

P.W.13 - the Inspector of Police at about 11.45 a.m. in the presence of a Doctor. The Doctor has not been examined. However, the Doctor has given Ex.P.10 Certificate to the effect that when the statement was given by the deceased, she was in a fit state of mind to give dying declaration.

24. The second dying declaration was recorded by P.W.16 - Judicial Magistrate at 7.45 p.m. on the same day in the presence of another Doctor, who has also given a certificate that the deceased was in a fit state of mind to give the dying declaration. So, both the documents have been attested by Doctors and both the documents have been recorded by different authorities. There is no reason to reject their evidence relating to the fact of having recorded dying declarations from the deceased when she was in a conscious and fit state of mind. However, we have to find out whether there is any consistency with reference to the occurrence.

25. According to the deceased in Ex.P.10, there was a quarrel ensued between the deceased family and the accused family. On the date of occurrence, i.e. on 09.07.1999 at about 7.00 a.m., quarrel took place outside the house of the deceased. During the course of quarrel, both the accused came running towards the deceased for the purpose of beating her. The moment she felt that she would be beaten by those accused persons, she turned around and rushed to her house by running. Both the accused followed her and entered into the house of the deceased. A.2 took the kerosene can, which was available in the house and poured kerosene on her and A.1 lighted a match stick and threw it on her body.

26. According to the deceased in Ex.P.22, the dying declaration recorded by P.W.16 - Judicial Magistrate, there was a quarrel between the deceased and the relatives of the accused. In that process of the quarrel, the two sisters of A.1 and his cousin sister began to beat her by catching hold of her hair and kicked her. When she was kicked on the stomach, she felt pain and got up immediately and in order to escape from their hands, she came running towards her house. At that time, A.1 and A.2 followed her and committed this act.

27. How the occurrence started has been given in clear details in Ex.P.22; but those details have not been given in Ex.P.10. On the other hand, as per Ex.P.10, there was a wordy quarrel between the accused on the one hand and the deceased on the other hand and at the end of the wordy quarrel, both the accused tried to beat her and

the deceased came running to her house. As per Ex.P.22, there was a wordy quarrel between the sisters of A.1 and the deceased and at the end of the quarrel, all the three sisters of A.1 beat her black and blue and one of the sisters thrashed her by kicking with her legs on her stomach and thereafter, the deceased came to the house and both the accused followed her.

28. Ex.P.10 - statement was recorded by P.W.13 - Inspector of Police at about 11.45 a.m. Ex.P.22 - dying declaration by the deceased was recorded by P.W.16 - Judicial Magistrate at about 7.45 p.m. on the same day. So, a perusal of both the documents would indicate that the deceased has not only given different versions with reference to the genesis of the occurrence, but also wanted to implicate the family members of A.1 also. In such a situation, it cannot be stated that the dying declaration with reference to the occurrence made by the deceased are consistent. On the other hand, it is noticed that the deceased had anxiety to implicate as many persons as she can in the latest statement, which was recorded by P.W.16, the Judicial Magistrate. Thus, it is clear that there are not only inconsistencies, but also different versions given by the deceased by making improvements as well as implicating some more persons.

29. As held by this Court as well as the Supreme Court, the evidence relating to the dying declarations cannot be tested in the cross examination because the dying declaration given by the deceased is not available for the same. Even if there are some discrepancies, when there are other materials to corroborate the crux of the contents of the dying declarations, then we can place reliance upon them and convict the accused. But in this case, there is total lack of corroboration. On the other hand, Exs.P.8 and P.9, which have been produced by the prosecution would indicate that both the parties gave complaints against each other and ultimately, one Mohan intervened and the matter was compromised and both of them were asked to sign in Ex.P.9 with reference to compromise. Though the said Mohan has not been examined by the prosecution, he has been examined by the defence as D.W.1, who speaks about the details of the earlier occurrence and complaints and also the Panchayat, which took place on 08.07.1999. D.W.1 - Mohan, in his chief examination would categorically state that he saw the deceased coming out with fire from her house and she did not tell anything implicating the accused persons. There is no reason to reject the evidence of D.W.1.

30. Yet another doubt that may arise in this case is as to whether A.1 and A.2, who compromised the matter earlier, would pick up quarrel again with the deceased and would choose to chase her, that too in a day time, to her house and poured kerosene and set fire on her body. It is also preposterous to see that if such a step was taken by the accused to commit her murder or to kill her by pouring kerosene, it is quite artificial that they allowed the deceased to escape from the house and ran away to enable her to tell others implicating the appellants. In view of the various artificialities and inconsistencies, we are unable to place any reliance upon the dying declarations Ex.P.10 and Ex.P.22 and ultimately, we are constrained to give the benefit of doubt to both the accused.

31. For the reasons stated above, the Judgment of the trial Court in S.C.No.405 of 2000 (dated: 26.06.2002) convicting the Appellants / A.1 and A.2 under Section 302 r/w 34 I.P.C. is set aside and this appeal is allowed. The Appellants / A.1 and A.2 are acquitted of the charge under Section 302 r/w 34 I.P.C. The bail bonds shall stand cancelled.
sbi

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Additional Sessions Judge,
Fast Track Court No.3,
Poonamalloor, Chengalpattu.
2. The Principal Sessions Judge,
Chengalpattu.
3. The Judicial Magistrate No.1,
Poonamallee.
4. The Chief Judicial Magistrate,
Chengalpattu.
5. The Inspector of Police,
F.2 Avadi Tank Factory Police Station,
Avadi, Chennai-54.

6. The Superintendent,
Central Prison, Vellore.

7. The Public Prosecutor,
High Court, Madras.

8. The District Collector,
Chengalpattu.

9. The Director General of Police,
Chennai-4.

10. The Superintendent, Central Prison
for Women, Vellore

+ one cc to Mr. A. Thiyagarajan, Advocate sr no. 7235

TEJ(CO)
NM(23.03.2006)

CRL.A.No.1010 of 2002



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